THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.15000 OF 2006

Date: 07-12-2006

Between:

Smt Gutam Lakshmikanthamma

…Petitioner

and

The State of A.P., represented by its
Principal Secretary, Municipal Administration
Hyderabad and others

…Respondents.

O R D E R:-

The grievance in the writ petition is that the respondents are using the petitioner's land in an extent of Ac.01-50 cents in Survey No.1963/1, Nellore Bit-I, for the purpose of burial ground and are throwing debris, without initiating any proceedings for acquisition of the land. The petitioner has the land adjacent to the Vengalarao Nagar Colony, Nellore. He claims to have inherited the property under a Will Deed in the year 1989 executed by her father-in-law.

The land is admittedly not being cultivated and is lying fallow. Since 1989, it is asserted, persons belonging to Muslim and Christian communities in the locality were using the land as burial ground. It is also stated that the petitioner's father-in-law had filed OS No.278 of 1990 before the I Addl.District Munsif, Nellore against the people of the locality for perpetual and mandatory injunctions to remove the tombs. The petitioner, on the demise of her father-in-law contested the suit. The suit is stated to have been decreed granting perpetual and mandatory injunctions directing the respondents therein to remove the tombs erected therein. Thereafter, the defendants have preferred an Appeal in A.S.No.11 of 1997 before the IV Addl.District and Sessions Judge, Nellore, which is stated to have been dismissed for default on 06-01-2003. While so, it would appear, persons of the locality had represented to the respondents for allotting the land to them for using the same as burial ground. Thereafter, consultations are on

and inter-departmental correspondence has been generated for acquisition of the land in question. Details of the inter-departmental correspondence has been set out in paras 4 and 5 of the writ petition. Petitioner also represented to the respondents to acquire her land and to pay her reasonable compensation. It is stated that the council of the second respondent had also resolved to pay compensation to the petitioner and had intimated the same to the 3rd respondent who in turn is stated to have addressed a letter to the 2nd respondent to deposit the amount so as to enable the 2nd respondent to initiate land acquisition proceedings. That is where the matter rests. The 2nd respondent has not deposited any amounts and the 3rd respondent has not initiated land acquisition proceedings. In the circumstances, the petitioner seeks the relief already adverted to.

No Mandamus can issue to the respondent to acquire the land of the petitioner. The respondents have not passed any order declaring the land to be a burial ground nor have they permitted (by a formal order), persons in the locality to use the petitioner's land as a burial ground. The mere fact that the people of the locality have been using the petitioner's land as a burial ground could not *per se* obligate the respondents, in particular the 2nd respondent to treat the land as burial land and to acquire the same. Acquisition of the petitioner's land, which the petitioner now claims is valued at over 60 lakhs, is a matter to be determined by the respondents in particular, the 2nd respondent on the basis of its financial resources. These are matters of fiscal choices and this court could not determine the destination of the funds of the respondents by issuing a Mandamus to acquire the land of the petitioner. If the petitioner is aggrieved by any unauthorized and unlawful user of her property by any person for use the same as burial

ground, the petitioner is at liberty to obtain appropriate orders from the Civil Court against such person or for execution of the decree already said to have been obtained in OS 278 of 1990 against the parties to the said suit and the decree therein.

On the analysis above, the writ petition is misconceived and is accordingly dismissed. No order as to costs.

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GODA RAGHURAM, J

7th December, 2006
PNV/GRR

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